
APPENDIX A**LIST OF COMMENTERS****Comments to NOI**

AirTouch Communications, Inc. (AirTouch)
Aliant Communications Co. (Aliant)
American Public Communications Council
AT&T Wireless Services Inc. (AT&T Wireless)
Bay Springs Telephone Co., Crockett Telephone Co., National Telephone of Alabama,
Peoples Telephone Co., Roanoke Telephone Co., and West Tennessee Telephone Co.
(Rural Telephone Companies)
Beeples, Inc.
Bell Atlantic
BellSouth Corporation (BellSouth)
Celpage, Inc.
Centennial Cellular Corp. (Centennial)
Cellular Telecommunications Industry Association (CTIA)
FreePage Corporation (FreePage)
GTE Service Corporation (GTE)
Illuminet, Inc. (Illuminet)
Motorola, Inc. (Motorola)
Nokia Telecommunications, Inc.
Omnipoint Communications, Inc. (Omnipoint)
Paging Network, Inc. (PageNet)
Personal Communications Industry Association (PCIA)
Rural Telecommunications Group (RTG)
SBC Communications Inc. (SBC)
Source One Wireless II, L.L.C. (Source One)
Sprint Corporation (Sprint)
Sprint Spectrum L.P. (Sprint Spectrum)
Telecommunications Resellers Association (TRA)
United States Cellular Corporation (USCC)
United States Telephone Association (USTA)
U S West, Inc. (U S West)
Vanguard Cellular Systems, Inc. (Vanguard)
Washington Utilities and Transportation Commission (WUTC)

Reply Comments to NOI

Ad Hoc Telecommunications Users Committee (Ad Hoc)

AirTouch

Bell Atlantic

BellSouth

CTIA

Illuminet

MCI Telecommunications Corporation (MCI)

Motorola

Nextel Communications, Inc. (Nextel)

Omnipoint

PageNet

PCIA

RTG

Rural Telephone Companies

SBC

Source One

Sprint Spectrum

360° Communications Company

USCC

USTA

Vanguard

Comments to CTIA Petition for Expedited Action

AirTouch

American Public Communications Council

AT&T Wireless

Bell Atlantic

BellSouth

CTIA

Haynes, Larry L. (via e-mail)

Motorola

Nextel

Omnipoint

Organization for the Promotion and Advancement of Small Telecommunications Companies

Petroleum Communications, Inc. (Petro Com)

Public Utilities Commission of Ohio (Ohio PUC)

Rural Cellular Association

RTG

SBC (filed prior to Public Notice)
Small Business Survival Committee
Sprint Spectrum
USTA
Vanguard
WUTC

Reply Comments to CTIA Petition for Expedited Action

AirTouch
Association of College & University Telecommunications Administrators & Ad Hoc
Telecommunications Users Committee
BellSouth
CTIA
New York State Department of Public Service
PageNet
RTG
SBC
USTA
Vanguard

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Declaratory Ruling and Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 77. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

In this Notice, we propose solutions to obstacles that may be impeding the ability of carriers interested in offering Calling Party Pays (CPP) from doing so. CPP holds the potential for making mobile wireless services more attractive to large numbers of customers who do not subscribe today, and for spurring the acceptance and development of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of local exchange carriers (LECs). There is significant evidence that CPP would help encourage Commercial Mobile Radio Service (CMRS) subscribers to leave their handsets on and available to receive incoming calls because they would not be incurring as high a cost for receiving calls on a usage-sensitive basis. This increases the use of mobile wireless services, and provides certain benefits to both calling parties, who otherwise would not be able to complete calls to CMRS subscribers who keep their phones off, and CMRS subscribers, who would no longer have an economic incentive to avoid or minimize the acceptance of calls. These benefits may be especially significant for price-conscious customers who find that the flat-rate plans that come with large numbers of minutes included are too expensive. CPP would also be beneficial to those consumers concerned with the ability to control their monthly telecommunications expenses. Thus, CPP holds the potential for making mobile wireless services more effectively available to large numbers of customers who do not subscribe today or who strictly limit their usage, and to spur further competition by offering a different service option that may be particularly attractive to low-income, and low-volume and mid-volume consumers.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. § 603(a).

³ See *id.*

Because we find that there is some uncertainty about the regulatory status of CPP, we issue a Declaratory Ruling clarifying that service offered with a CPP option, as defined in paragraph 2 of the Notice, still qualifies as CMRS service. In the Notice of Proposed Rulemaking portion of this Notice, we first consider important calling party notification issues. We then consider a uniform notification standard to protect calling parties by providing them with sufficient information to make an informed decision before completing a CPP call to a wireless subscriber and incurring charges. We also ask how we may work cooperatively with the states to develop such a notification system. We also seek comment on possible additional measures. Second, we discuss and seek comment on whether the proposed notification is sufficient to create an "implied-in-fact" contract between the caller and the CMRS carrier. Third, we discuss whether there is any need for Commission action to protect callers from unreasonably high charges for CPP calls. Fourth, we discuss how CMRS providers may bill and collect from the calling party for calls to CPP subscribers, including LEC billing and collection. We also seek comment at various points on issues relating to the accessibility of CPP offerings to people with disabilities, including Telecommunications Relay Service (TRS) and text telephone (TTY) users.

B. Legal Basis for Proposed Rules

The proposed action is authorized under Sections 1, 4(i), 7, 201, 202, 303(r), and 332 of Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 201, 202, 303(r), 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A small business concern is one which: (1) is independently owned

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."¹⁰ As of 1992, there were approximately 85,006 such jurisdictions in the United States.¹¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.¹² The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules.

COMMON CARRIER SERVICES AND RELATED ENTITIES

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.¹³ According to data in the most recent report, there are 3,528 interstate carriers.¹⁴ These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small

⁷ Small Business Act, 15 U.S.C. § 632 (1996).

⁸ 5 U.S.C. § 601(4).

⁹ U.S. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1992 ECONOMIC CENSUS, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹⁰ 5 U.S.C. § 601(5).

¹¹ U.S. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1992 CENSUS OF GOVERNMENTS.

¹² *Id.*

¹³ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

¹⁴ *Id.*

businesses when they have no more than 1,500 employees.¹⁵ Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."¹⁶

Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.¹⁷ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."¹⁸ For example, a reseller that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at

¹⁵ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

¹⁶ 13 C.F.R. § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16144-45 (paras. 1327-31) (1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

¹⁷ U.S. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS, AND UTILITIES: ESTABLISHMENT AND FIRM SIZE, at Firm Size 1-123 (1995) (1992 Census).

¹⁸ See generally 15 U.S.C. § 632(a)(1).

least one year at the end of 1992.¹⁹ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.²⁰ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules.

Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange service. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²¹ According to the most recent telecommunications industry revenue data, 1,410 carriers reported that they were engaged in the provision of local exchange services.²² We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,410 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules.

Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²³ According to the most recent *Trends in Telephone Service* data, 509 carriers reported that they were engaged in the provision of pay telephone services.²⁴ We do not have data specifying the number of these carriers that are not

¹⁹ 1992 *Census*, at Firm Size 1-123.

²⁰ 13 C.F.R. § 121.201, SIC code 4813.

²¹ *Id.*

²² *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

²³ 13 C.F.R. § 121.201, SIC code 4813.

²⁴ *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 509 small entity pay telephone operators that may be affected by the proposed rules.

Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.²⁵ According to the most recent *Trends in Telephone Service* data, 358 reported that they were engaged in the resale of telephone service.²⁶ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 358 small entity resellers that may be affected by the proposed rules.

INTERNATIONAL SERVICES

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.²⁷ According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.²⁸ The Census report does not provide more precise data.

WIRELESS AND COMMERCIAL MOBILE SERVICES

Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500

²⁵ 13 C.F.R. § 121.201, SIC code 4813.

²⁶ *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

²⁷ 13 C.F.R. § 120.121, SIC code 4899.

²⁸ U.S. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1992 ECONOMIC CENSUS INDUSTRY AND ENTERPRISE RECEIPTS SIZE REPORT, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

persons.²⁹ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.³⁰ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.³¹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the proposed rules.

220 MHz Radio Service -- Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.³² According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.³³ Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service -- Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment

²⁹ 13 C.F.R. §121.201, SIC code 4812.

³⁰ 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

³¹ *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

³² 13 C.F.R. § 121.201, SIC code 4812.

³³ U.S. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS, AND UTILITIES, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

payments.³⁴ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³⁵ The SBA has approved these definitions.³⁶ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.³⁷ Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.³⁸ A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.³⁹ At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone*

³⁴ Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552; Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Third Report and Order; Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70 (paras. 291-95) (1997) (*220 MHz Third Report and Order*).

³⁵ *Id.* at 11068-69 (para. 291).

³⁶ See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

³⁷ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

³⁸ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

³⁹ 13 C.F.R. § 121.201, SIC code 4812.

Service data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.⁴⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,⁴¹ and the most recent *Telecommunications Industry Revenue* data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services.⁴² Consequently, we estimate that there are fewer than 23 small mobile service carriers that may be affected by the proposed rules.

Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁴³ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁴⁴ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁴⁵ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A

⁴⁰ *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

⁴¹ 13 C.F.R. § 121.201, SIC code 4812.

⁴² *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

⁴³ See Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52 (paras. 57-60) (1996); see also Section 24.720(b) of the Commission's Rules, 47 C.F.R. §24.720(b).

⁴⁴ See *Id.* at 7852 (para. 60).

⁴⁵ See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (paras. 114-20) (1994).

and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁴⁶ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁴⁷ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁴⁸ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁹ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁵⁰ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no

⁴⁶ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

⁴⁷ The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁴⁸ BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

⁴⁹ 13 C.F.R. § 121.201, SIC code 4812.

⁵⁰ The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

more than 1,500 persons.⁵¹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁵² In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

The proposed rules in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that hold CMRS licenses. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service as CMRS operators, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing SMR authorizations are held by small entities, as that term is defined by the SBA.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.⁵³ At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

CMRS carriers interested in offering their subscribers CPP would be required to provide a notification to those placing calls to the CPP subscriber that include the following elements: (1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges; (2) Identification of the CMRS provider; (3) The per minute rate, or other rates, that the caller will be charged by the CMRS provider; and (4) An opportunity to terminate the call prior to incurring any charges. In addition, LECs may be required to provide billing name and address information to CMRS carriers for parties who call CPP subscribers. Comments are also requested on the possible need for billing and collection

⁵¹ 13 C.F.R. § 121.201, SIC code 4812.

⁵² 47 C.F.R. §90.814(b)(1).

⁵³ This service is governed by subpart I of part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001 - 22.1037.

services to be provided for CPP by LECs. We request comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

We have minimized burdens to the maximum extent possible. CPP is an optional CMRS offering that carriers may provide to their wireless subscribers, at the sole discretion of the carrier. As to the provision of caller billing name and address information, or billing and collection services, it is anticipated that any such services would be provided to CMRS carriers at negotiated rates that would enable LECs to recover all associated costs. We seek comment on significant alternatives that commenters believe we should adopt.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

**Separate Statement
of
Commissioner Susan Ness**

Re: Calling Party Pays Service Offering in the Commercial Mobile Radio Services

Commercial mobile radio services ("CMRS") are one of the great success stories in communications. In the 1980s, cellular service brought a fundamental change to communications by adding the convenience of *mobility*. In the 1990s, Personal Communications Services ("PCS") have added the considerable benefits of *competition* and *innovation*.

Today, in most markets, consumers can choose among a variety of carriers, using several different technologies, and each carrier generally offers an array of service plans tailored to subscribers' diverse needs. There are plans that meet the unique needs of high-volume customers, and others that serve those who want a wireless phone only for use in emergencies. There are plans that offer free phones. There are plans that allow for nationwide "roaming." There are plans that provide Caller ID, voice mail, text messaging, and other vertical features. There are plans that eliminate all traditional usage charges. And on and on and on.

I have been delighted to see CMRS competition, innovation, and investment intensify substantially during my tenure as a Commissioner. Given these salutary developments, I firmly believe that any regulation in this market should be much more limited than in the case of markets where competition has not yet progressed to the same degree. I am inclined to give the industry wide latitude to experiment with additional features and options.

It is in this spirit that I support the Declaratory Ruling and Notice of Proposed Rulemaking that enables the industry to establish Calling Party Pays ("CPP"). I believe this may be a valuable option that will drive per-minute CMRS rates still lower, and CMRS subscribership still higher. But there are issues that need to be considered before we adopt any final rules. In particular, I hope commenting parties will address the question of how competition will constrain the charges imposed on calling parties. As we noted in the Access Reform docket, the ability to *terminate* a call is not necessarily subject to the same competitive pressures as

originating access can be.¹ Will competition -- along with appropriate notification procedures -- nonetheless suffice to ensure that the rates charged to calling parties are reasonable?

Also, I hope parties will help us assess certain other issues. Will CPP enhance or diminish the substitutability of wireline and wireless services? Today, most local telephone service is unmetered; no additional charges are imposed for calls to local numbers. How will wireline customers react if they cannot complete a local call to a wireless customer except by agreeing to pay an additional charge? What is the relationship between any such charges and the charges the CMRS provider already collects from the calling party's carrier under our reciprocal compensation regime? How will CPP affect businesses and other institutions that use PBXs or Centrex services, where the individual who places the call may not be the one responsible for paying the charge?

Finally, we need to carefully consider the respective responsibilities of federal and *state* regulators. Although we have a special jurisdictional responsibility with wireless services, state regulators are closer than we are to consumers, and they have primary responsibility for local telephone services. As wireless services increasingly become a substitute for wireline services, we need to work closely and cooperatively with our state colleagues to make sure that their concerns are appropriately considered.

I look forward to reviewing the record on these and other issues, and to moving forward so that an industry that has served the American consumer extraordinarily well can continue to do so.

¹ Indeed, after investigating the charges imposed on wireline calling parties, OFTEL, our counterpart regulatory body in the United Kingdom, ordered a 25 percent reduction in the prices that were charged consumers to terminate a call on a wireless carrier.

**Statement of Commissioner Harold Furchtgott-Roth,
Concurring in Part and Dissenting in Part**

**In the Matter of Calling Party Pays Service Offering in the Commercial Mobile
Radio Services (WT Docket No. 97-207)**

I am very supportive of the goal of this proceeding: to remove unnecessary regulatory obstacles to the offering of calling party pays (CPP) service to consumers, so that its success or failure reflects the commercial judgment of providers responding to customer demand for this service.

One aspect of this proceeding, however, is especially problematic to me, as it appears the Commission has set the stage for possibly straying from the goal of ensuring that service providers remain as unfettered from CPP regulation as possible. The Commission has chosen in this proceeding to open the door to possible CMRS rate regulation by seeking comment on whether market conditions exist or are likely to develop that would exert pressure on CPP rates.

How odd it is that contemporaneously with the Commission's adoption of this Notice, it also adopted a report celebrating the continuing and increasingly bright competitive landscape for CMRS services in general. In our Fourth Report to Congress on competitive market conditions in CMRS, the Commission concluded that the mobile telephony market continues to make "steady competitive progress," noting the results of one study showing that the average price per minute of mobile telephone service has declined over 40% between the end of 1995 and the end of 1998. Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993 - Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fourth Report* (rel. June 24, 1999) at p. 63.

Yet, juxtaposed with such findings, the Commission has chosen today to ready itself to proceed down the CPP rate regulation path, in an effort apparently to guard consumers against the possibility of excessively high CPP rates. I object to this Commission even commencing this line of inquiry. Given the bright CMRS competitive landscape, would not the better choice be to let CPP develop as it will in the marketplace, and take action only if credible evidence emerges once CPP has been launched that regulatory intervention is needed to protect consumers? Would not this approach better comport with the goal of this proceeding to allow CPP services to be provided unfettered of undue regulation?

The Commission's action in this regard is particularly troubling given that we are at the same time proposing elements of a CPP notification announcement that would, among other things, alert consumers to the per-minute rate and other charges the calling party would

be charged by the CMRS provider. I would submit that this is a reasonable first step in safeguarding consumers, and that should problems emerge in the future, we should only at that time consider such severely intrusive measures as rate regulation.

On a final note, I am greatly concerned as well by the Commission's apparent inclination to deal piecemeal with the Supreme Court's recent remand of our rules implementing Section 251 of the Act, 47 U.S.C. § 251. The Commission recently issued a further notice of proposed rulemaking to deal with the issues raised by the remand. Yet, in this proceeding, the Commission requests comment on whether CPP-related billing and collection information constitutes an unbundled network element under Section 251. Although we do state that we will apply our decisions in the remand proceeding to the issue of billing and collection information presented here, the better course of action in my judgment would be to consider all issues pertaining to unbundled network elements in one proceeding.